



BILLINGS GAZETTE

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Guest opinion: Time to fix Montana's DNA testing law

9 HOURS AGO • BY KEEGAN FLAHERTY AND LARRY JENT

On March 20, 1987, an intruder broke into a home in Billings, Montana and raped an 8-year-old girl. The evidence pointed to Jimmy Ray Bromgard. The victim identified him in a lineup and a forensic expert testified that his hair matched that found at the crime scene. At the age of 18, Bromgard was sentenced to 120 years in prison. It appeared as though justice had been served.

Except that Jimmy Ray Bromgard was innocent, as DNA evidence proved after he had spent nearly a decade and a half behind bars.

His case is a reminder that sometimes our justice system gets it wrong. And when it does, it is critical to provide a way for the wrongfully convicted to access post-conviction DNA testing to prove their innocence.

The traditional appeals process is often insufficient for proving wrongful convictions. That is why I sponsored Montana's post-conviction DNA testing law in 2003, which was intended to create a clear legal avenue for the innocent to access this technology. However, in the decade since the law passed, it has been more of a roadblock than a pathway to justice.

All three DNA exoneration cases in Montana occurred before the statute was enacted, through the traditional appeals process. Since the law has been on the books, state courts have not approved a single request for post-conviction DNA testing.

More reasonable standard

It is time for lawmakers to fix this statute so that it fulfills its promise of delivering justice to the wrongfully convicted, crime victims and the public. Rep. Margie MacDonald, D-Billings, is sponsoring legislation that would make sensible revisions to accomplish this. First, under current law a person seeking DNA testing must essentially prove their innocence before a court will grant it. This is nearly impossible to do, and it flies in the face of reason. Innocence or guilt should be assessed after the results come back. The Innocence Project's proposal would change this to create a more reasonable standard for Montanans to receive testing.

Add to data base

Next, the law would be revised to allow a judge to order a DNA profile to be entered into the Combined DNA Index System (CODIS), increasing the likelihood of identifying the real criminal in a wrongful conviction case. Not only can this help Montanans prove their innocence, but it can protect the public from the true perpetrators who could be out harming others.

The real perpetrator was identified in 161 of the nation's 325 DNA exoneration cases. These criminals went on to commit and be convicted of 145 additional violent crimes, including 78 rapes and 34 murders, while the innocent person languished behind bars.

Testing after release

Finally, the proposal would bring Montana's law in line with those in 37 other states by no longer requiring a person to be behind bars to be eligible for testing. After prison, wrongfully convicted Montanans (likely facing damaged reputations, dim job prospects, and various types of restrictions) deserve to prove their innocence and move on with their lives.

Montana was one of the earliest states to pass a post-conviction DNA testing law, and 10 years later we have the benefit of knowing how it could and should work better.

This session lawmakers should make testing more widely available to deserving individuals like Jimmy Ray Bromgard. It's a matter of justice and public safety.